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 AT&T Communications of Pa., Inc. v. :
 Verizon North, Incorporated :
 :
 Verizon North's intrastate carrier access : Docket No.
 rates are unjust and unreasonable, and :
 seek an immediate reduction to no more : C-20027195
 than the rate charged by Verizon :
 Pennsylvania. :
 :
 Initial telephonic prehearing conference :
 ----- X

BTL

Pages 1 through 44

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JUN 19 2003

Thursday, May 29, 2003

Met, pursuant to notice, at 10:10 a.m.

BEFORE:

CYNTHIA WILLIAMS FORDHAM, Administrative Law Judge

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(None.)

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(None.)

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE CYNTHIA WILLIAMS FORDHAM:

Good morning. I am Administrative Law Judge Cynthia Williams Fordham and this is the time and place for a prehearing conference in the matter of AT&T Communications of Pennsylvania, Inc. versus Verizon North, Inc. at Docket Number C-20027195.

I am in the Philadelphia State Office Building. There is a court reporter here with me and two parties are here with me. The other parties are available in the Harrisburg Keystone Building.

At this time I would ask the parties here to identify themselves starting with Ms. Paiva.

MS. PAIVA: Suzan Paiva on behalf of Verizon Pennsylvania and Verizon North.

JUDGE FORDHAM: Can you hear Ms. Paiva?

MR. POVILAITIS: She is a little weak, Your Honor. If the mike could be brought closer that would be helpful.

JUDGE FORDHAM: All right.

MS. PAIVA: I will talk louder.

JUDGE FORDHAM: Mr. Barber.

MR. BARBER: Bob Barber on behalf of AT&T Communications of Pennsylvania LLC.

JUDGE FORDHAM: The parties that are in Harrisburg,

COMMONWEALTH REPORTING COMPANY, INC.

1 (800) 334-1063

1 would you identify yourself? Is Mr. Clearfield there?

2 (No audible response.)

3 MR. McCLELLAND: Phil McClelland and Joel Cheskis
4 for the Office of Consumer Advocate.

5 JUDGE FORDHAM: OSBA?

6 MS. JONES: Angela Jones, Office of Small Business
7 Advocate.

8 JUDGE FORDHAM: OTS?

9 MR. MICKENS: Kenneth L. Mickens, Your Honor,
10 Senior Prosecutor, Office of Trial Staff.

11 JUDGE FORDHAM: Is there a MCI representative?

12 MS. MISTURAK-GINGRICH: Kathleen Misturak Gingrich
13 on behalf of MCI Communications.

14 JUDGE FORDHAM: Can you state your name again,
15 please?

16 MS. MISTURAK-GINGRICH: Kathleen Misturak Gingrich,
17 M-I-S-T-U-R-A-K-hyphen-G-I-N-G-R-I-C-H. And it is also
18 in the prehearing memorandum that was provided by
19 Michelle Painter yesterday.

20 JUDGE FORDHAM: Thank you.

21 Mr. Povilaitis?

22 MR. POVILAITIS: Yes, Your Honor. John Povilaitis
23 for Qwest Communications Corporation.

24 JUDGE FORDHAM: Is there a representative for the
25 Rural Telephone Company Coalition?

1 MS. ARMSTRONG: Yes, Your Honor. Patricia
2 Armstrong on behalf of the RTCC.

3 JUDGE FORDHAM: Thank you.
4 Sprint?

5 MS. BENEDEK: Yes, Your Honor. Sue Benedek on
6 behalf of Sprint Communications Company LP and United
7 Telephone of Pennsylvania.

8 JUDGE FORDHAM: Did I leave anyone out?

9 MR. POVILAITIS: I think that is everyone here,
10 Your Honor.

11 JUDGE FORDHAM: Thank you.

12 I will give a brief history of the proceeding.

13 On December 30 of 2002 Verizon Pennsylvania, Inc.
14 and Verizon North, Inc. filed a separate joint petition
15 regarding the further reduction of their access charges
16 pursuant to the Bell Atlantic Pa./GTE merger order, the
17 global order of 1999 and the generic access charge
18 investigation at October M-00021596. This joint proposal
19 was published January 18, 2003, at 33 Pa. Bulletin 502.
20 Comments were filed by the Office of Consumer Advocate,
21 AT&T Communications of Pennsylvania, Inc., Sprint
22 Communications Company and United Telephone Company of
23 Pennsylvania, the Rural Telephone Company Coalition, the
24 Office of Small Business Advocate and Qwest
25 Communications Corporation.

1 On March 21, 2002, AT&T filed a formal complaint
2 against Verizon North seeking to have Verizon North's
3 access charges reduced to Verizon Pa.'s levels pursuant
4 to the requirements in the Commission merger order at
5 A-310200F0002. The complaint was docketed at C-20027195.
6 The complaint, which was initially dismissed by Chief
7 Administrative Law Judge Robert Christianson, was
8 reinstated by Commission order entered December 24, 2002.
9 That order also bifurcated the access charge
10 investigation so that all Verizon matters, including the
11 complaint, would be litigated at the C docket, which is
12 C-20027195.

13 Verizon of Pennsylvania North agreed to one
14 proposed access charge reduction plan. However, Qwest,
15 OCA, OTS, OSBA, AT&T and MCI have objected to the joint
16 petition.

17 Given that there were contested material factual
18 issues, by order entered May 5, 2003, the Commission
19 referred the Verizon joint petition to the Office
20 Administrative Law Judge for evidentiary hearings and a
21 recommended decision. The Commission recognized that the
22 parties to the proceeding raised factual and non-factual
23 policy issues. Since the Commission is committed to
24 developing a full record while ensuring judicial
25 efficiency the presiding ALJ was given the discretion to

1 classify the issues as either factual or non-factual
2 policy and to permit the parties to brief those issues
3 that do not warrant an evidentiary hearing.

4 Since the generic access charge investigation at
5 M-00021596 was bifurcated to separate the Verizon and the
6 RTCC/Sprint access charge investigations, the Commission
7 stated that the two joint petitions would be kept on
8 separate tracks but with the same six month deadline from
9 the date of entry of the order.

10 The Verizon joint petition for access charge
11 reduction was consolidated with the AT&T Communications
12 of Pennsylvania, Inc. versus Verizon North, Inc.
13 complaint at C-20027195 regarding Verizon North's access
14 charges pursuant to the Commission order of December 24,
15 2002, and it would proceed under the C docket number.

16 In accordance with the Commission order, the matter
17 was assigned to me and the prehearing conference in this
18 matter was scheduled for today. I requested that
19 prehearing memoranda be filed and all of the active
20 parties have filed prehearing memoranda. In addition,
21 there is a proposed schedule in my order and Counsel from
22 OCA and also from Verizon contacted me a couple of days
23 ago and they have dealt with that issue in terms of the
24 schedule.

25 Let's start first with AT&T, if there are any

1 issues that we need to deal with. What I will do is have
2 Mr. Barber mention any issues that they have and then we
3 will go to the Office of Consumer Advocate and then
4 Verizon. And then if there are any other parties that
5 have issues then we will deal with them at that time.

6 MR. BARBER: That would be issues regarding the
7 schedule, Your Honor?

8 JUDGE FORDHAM: Yes, issues regarding the schedule
9 or witnesses or even -- I guess when we get to OCA we
10 will deal with the discovery matters.

11 MR. BARBER: Yes, Your Honor.

12 AT&T, I was a party to the discussions -- as a
13 matter of fact, I believe all the parties present at the
14 prehearing were party to the discussions regarding the
15 schedule and we are in agreement with the schedule that
16 was set forth and proposed in the OCA's prehearing
17 memorandum. So we have no issues relative to that.
18 Certainly, the substantive issues we will be dealing with
19 those in our testimony.

20 JUDGE FORDHAM: Okay.

21 Mr. McClelland, would you like to go through, one,
22 the discovery? Because I know Verizon has some
23 objections to some of the discovery recommendations.

24 MR. McCLELLAND: Thank you, Your Honor.

25 I will now defer to Mr. Cheskis, also from our

1 office, on those issues.

2 JUDGE FORDHAM: Okay.

3 Mr. Cheskis.

4 MR. CHESKIS: Thank you, Your Honor.

5 JUDGE FORDHAM: You're welcome.

6 MR. CHESKIS: With regards to the schedule, I
7 actually did have one point that I wanted to clarify and
8 I did not have an opportunity to run this by the parties.
9 Your original proposed schedule suggested that the record
10 close on August 27. At the time that was a week after
11 the hearings would have been over. When we had requested
12 to you earlier this week that the hearings be pushed back
13 a week we did not also request that the record stay open
14 for an additional week, which would then be beyond --
15 another week beyond the close of the hearing. So while
16 our prehearing memo does include the record closing on
17 August 27 as you had indicated in your prehearing order,
18 we would like an additional week for the record to remain
19 open until, I believe, September 3rd.

20 MR. BARBER: Your Honor, that actually raises a
21 point. I don't know what process you want to pursue
22 here, but I guess the question is you want to put these
23 dates on the record.

24 JUDGE FORDHAM: Yes.

25 MR. BARBER: Okay.

1 JUDGE FORDHAM: With respect to the briefs, then,
2 the main briefs would still be due September 16 -- is
3 that what we're saying -- but the record would close on
4 the 3rd?

5 MR. CHESKIS: That's correct, Your Honor.

6 MS. PAIVA: I think his concern is the in-hearing
7 data requests. If they want to get answers and get them
8 in the record they wanted an extra week on that. And
9 Verizon does not object.

10 JUDGE FORDHAM: I did not bring my calendar with me
11 but I know Ms. Paiva has hers. Does that include the
12 holiday?

13 MS. PAIVA: The holiday is the 1st. The 3rd is a
14 Wednesday.

15 JUDGE FORDHAM: Okay.

16 Does anyone have any objection to the record
17 closing on the 3rd?

18 (No audible response.)

19 JUDGE FORDHAM: Hearing no objection, we can make
20 that change.

21 MR. CHESKIS: Thank you, Your Honor.

22 JUDGE FORDHAM: So for the record, what we would do
23 is we would have hearings on August 25, 26 and 27. And
24 the hearings would be in Harrisburg. The record will
25 close September 3rd, which is a Wednesday. The main

1 briefs would be due September 16 and the reply briefs due
2 September 26.

3 Are there any objections to that schedule?

4 (No audible response.)

5 MR. BARBER: And were you going to put the
6 testimony dates on the record too, Your Honor?

7 JUDGE FORDHAM: Yes.

8 The other dates that are in OCA's proposed schedule
9 are the initial settlement conference would be June 5;
10 company direct testimony June 25; non-company rebuttal
11 testimony July 18; all parties' surrebuttal testimony
12 August 4. And I believe everyone has agreed to those
13 dates.

14 MR. BARBER: Just for purposes of clarification,
15 Your Honor, I think it was the parties' expectation that
16 these would be in-hand dates on both the testimony and
17 the briefs. Generally the practice we have employed and
18 I guess we want to make sure that all parties are
19 agreeable to it is that by in-hand, in-hand includes
20 submission electronically of the document followed by
21 overnight mail, service by overnight mail. So in-hand
22 would include by close of business or submission of the
23 testimony electronically followed by overnight service.
24 And the same would apply for all the other documents.

25 JUDGE FORDHAM: I don't believe there is a problem

1 with that. Does anyone have a problem with Mr. Barber's
2 suggestion?

3 (No audible response.)

4 JUDGE FORDHAM: So I would indicate I am going to
5 send out another order after this delineating everything
6 that we have discussed during the prehearing conference
7 and with these dates I would indicate that it would be
8 in-hand. I believe we do have e-mail addresses for
9 everyone. I will talk about the service list when we
10 have completed the substantive part of our discussion,
11 because I have made some corrections to the service list.
12 Some were mistakes, typographical mistakes, when I sent
13 out the original, especially with Ms. Paiva's name and
14 her e-mail address. But then some other changes have
15 been made to Counsel since then. So we want to make sure
16 that we are sending the documents to the correct people.

17 MR. POVILAITIS: Your Honor, this is John
18 Povilaitis.

19 JUDGE FORDHAM: Yes.

20 MR. POVILAITIS: I would like to make a request for
21 a clarification of your procedural schedule.

22 I notice in at least one party's prehearing memo
23 the August 4th rebuttal testimony deadline was described
24 as Verizon rebuttal testimony. And I think it was in the
25 minds of Counsel when they worked out the schedule that

1 there could be some cross-rebuttal of other parties'
2 responsive testimony. So that August 4th date I would
3 suggest really ought to be a generic rebuttal testimony
4 deadline.

5 JUDGE FORDHAM: Mr. Barber?

6 MR. BARBER: Yes. OCA's schedule, and I don't mean
7 to speak for them, clearly designates it as an all
8 parties surrebuttal date. So the expectation is that,
9 for example, if AT&T had a response to testimony that OCA
10 filed or vice-versa we would be filing on that date as
11 well in addition to anything Verizon may be filing in
12 response to the other parties. So that is in accord with
13 what Mr. Povilaitis said. So it's not simply a Verizon
14 filing on August 4th. Other parties would be bound by
15 that date as well if they had responsive testimony to
16 other parties' testimony.

17 JUDGE FORDHAM: I am looking at the OCA proposed
18 procedural schedule. If there is anyone that has any
19 objection to that please let me know at this point.

20 (No audible response.)

21 JUDGE FORDHAM: Thank you, Mr. Povilaitis.

22 MS. MISTURAK-GINGRICH: Your Honor, this is
23 Kathleen Misturak-Gingrich for MCI.

24 I just want another clarification if I could. In
25 my notes I wrote down that we were talking about in-hand

1 delivery for briefs and testimony. But would the in-hand
2 delivery by electronic mail followed by overnight also be
3 applicable to discovery?

4 JUDGE FORDHAM: Yes. And that is one of the issues
5 that we are getting ready to discuss now.

6 MS. MISTURAK-GINGRICH: Okay. Thank you.

7 JUDGE FORDHAM: You're welcome.

8 Mr. Cheskis, would you go over the discovery? I
9 think you and Ms. Paiva had some differences.

10 MR. CHESKIS: Certainly, Your Honor.

11 On page five of the OCA prehearing memorandum we
12 outlined a series of modifications to the standard
13 discovery procedure that I think have become pretty rote
14 in some of the other cases that we have been involved in
15 that are particularly under a shortened time schedule
16 such as this one where the OCA typically does suggest
17 these modifications to discovery.

18 In reviewing the Verizon prehearing memo, they
19 agree with A, F and G and disagree with B, C, D and E.
20 Certainly Verizon, I don't mean to speak for them but
21 they could correct me if that is wrong and it's not
22 right.

23 Just to go over what I believe are the contested
24 issues, the OCA suggests that objections to
25 interrogatories be communicated orally within three days

1 of service and that unresolved objections be served to
2 the ALJ in writing within five days of service of the
3 interrogatories. Any motions to dismiss objections or
4 the direct answering of interrogatories be filed within
5 five days of service of the written objections. And that
6 answers to motions to dismiss be filed within three days
7 after the service of the motion.

8 Again, these are what we believe have become
9 standard in these litigated cases that have a shortened
10 timeframe and we suggest that because this case also is
11 under a similar time constraint that the same
12 restrictions or modifications be put in place for this
13 case.

14 JUDGE FORDHAM: Ms. Paiva?

15 MS. PAIVA: As Mr. Cheskis correctly pointed out,
16 we did agree to shorten the response time to ten days for
17 the interrogatories, document requests and requests for
18 admissions which, you know, is going to be a substantial
19 burden on us, especially in light of our schedule with
20 the work stoppage and people being out for training and
21 everything in the months before that. So that is A, F
22 and G.

23 We do have a problem with B, C, D and E. And I
24 don't think those are actually standard in cases. In
25 those modifications OCA basically seeks to really get any

1 discovery disputes when they are still kind of in their
2 infancy directly to you before the parties really have a
3 chance to try to work them out. If you follow this
4 schedule, you rush to do objections before you have even
5 put your answer together and then you basically have to
6 go to Your Honor with a discovery dispute before the
7 answers have been submitted or on the same day that the
8 answers are submitted.

9 Verizon would suggest that the more reasonable way
10 to proceed is to have the objections due on the same day
11 as the answers so that the parties can review the data
12 they did receive and make a determination as to whether
13 that was enough or whether the objections are really
14 holding them up from prosecuting their case, and if they
15 have a problem with the objection the time within which
16 they would go to Your Honor with a motion to dismiss the
17 objection would be in the discretion of the party. If
18 they would like to turn around and go the next day there
19 is nothing to stop that. But these rules would require
20 you to go by a certain date even if there is some chance
21 to work it out. I just don't see the necessity for that.

22 And then once somebody does come to Your Honor
23 with a dispute I think on a case by case basis you could
24 say we will have a telephone conference the next day and
25 I will resolve it within a couple of days. You could use

1 your judgement based on the dispute. I don't think you
2 need to set out deadlines for that in advance, especially
3 in light of the fact that we are already answering in
4 very a shortened timetable. So these things should move
5 along quickly anyway just by virtue of that.

6 One other thing I wanted to point out also is on
7 page five of Verizon's prehearing memorandum we had three
8 additional caveats we wanted to add.

9 MR. BARBER: I never did get that.

10 MS. PAIVA: You didn't get that?

11 MR. BARBAR: I may have left before you served it.

12 MS. PAIVA: I'm sorry. You can have this copy.

13 I don't think it is anything too controversial.
14 The interrogatories should be served by e-mail so we can
15 start our clock running and get on them quickly. Service
16 of the interrogatories after three o'clock on a Friday or
17 the day before a holiday would be considered service the
18 next business day. That is pretty standard in these
19 cases too. The third one, I just wanted to point out
20 again what we mentioned off the record beforehand, which
21 is the potential for a work stoppage beginning August 2nd
22 and the fact that some of our employees have mandatory
23 strike training during July and also are required to take
24 their vacations during June and July. So we will make
25 our best efforts to comply with the ten days but I can't

1 guarantee strict compliance if due to the work stoppage
2 we just can't find the right person to answer the
3 question. And if that comes up I guess we will just have
4 to come to Your Honor and discuss the issue.

5 JUDGE FORDHAM: Mr. Barber, did you have something
6 on this issue?

7 MR. BARBER: No, Your Honor. I certainly have no
8 objection to the modifications that Verizon has proposed
9 now that I have had a chance to look at them in the
10 prehearing memo. And I certainly have no objection to
11 the shortening of the time limit for providing responses
12 to the interrogatories.

13 I think I share some of Verizon's concerns about a
14 mandatory process for motions to compel under these
15 circumstances, particularly with the shortened timeframes
16 for responses. But I think that is about as far as I
17 need to go with that.

18 MR. MICKENS: Your Honor, this is Ken Mickens for
19 the Office of Trial Staff.

20 JUDGE FORDHAM: Yes.

21 MR. MICKENS: On this matter we agree with the OCA
22 that the shortened time periods that they have identified
23 have pretty much become routine in matters where there
24 are shortened dates. We think that the concerns that
25 were raised by Verizon to these time periods can be

1 solved simply by requiring that the parties attempt to
2 resolve the issue informally within that period of time,
3 first try to resolve the issue informally. With that
4 requirement, I think that the time periods are reasonable
5 and the parties can accommodate themselves quite well.

6 JUDGE FORDHAM: Does anyone else have anything on
7 this issue?

8 MS. JONES: Yes, Your Honor. Angela Jones from the
9 Office of Small Business Advocate.

10 We agree with Mr. Mickens' comments and support the
11 proposal that OCA has put in their prehearing memorandum
12 with the caveat that Mr. Mickens has suggested as far as
13 informally coming to some agreement.

14 MR. CHESKIS: Your Honor, this is Joel Cheskis
15 again with the Office of Consumer Advocate. I just
16 wanted to add a few other things just in response to what
17 the parties have now said.

18 Certainly we are not proposing the guidelines or
19 the modifications to prohibit any informal discussions or
20 any attempts to resolve these disputes or any potential
21 disputes without having to go to the Judge. Certainly in
22 our letter B we are talking about orally communicating
23 objections within three days and that certainly gives the
24 parties the opportunity to resolve the matter before it
25 goes any further. You know, even then, after the

1 objection, after any further pleading is filed, you know,
2 we would certainly welcome the opportunity to informally
3 resolve any disputes.

4 I also wanted to note that in this type of
5 proceeding it is not just Verizon that is going to be
6 subject to discovery. I think that there are a lot of
7 parties that have positions here that may be contrary to
8 other parties and these restraints, these modifications,
9 would work in both directions for all parties involved.

10 Finally, I just want to say that I do think I have
11 some concern with proposal C in Verizon's prehearing
12 memo, which appears to contradict their agreement with
13 our letter A in our prehearing memo. They seem to agree
14 in one place with the ten day time period for responses
15 and then in another place say that they will do it in
16 their best efforts. We hope that best efforts apply to
17 all these matters but would like to see that we get
18 responses to our discovery within ten days regardless.

19 MR. BARBER: Your Honor, this is Bob Barber.

20 I don't mean to take up Suzan's cudgel because she
21 is more than competent of handling her own issues on
22 this, but particularly in terms of Mr. Cheskis talking
23 about the fact that this applies to all parties, that is
24 a concern of mine. We are setting up a process here for
25 objections and essentially mandatory motions to compel

1 under the rubric of unresolved objections that -- I mean,
2 in every case I am involved in and I have been involved
3 in we do attempt to work out these issues on an informal
4 basis and often times the resolution consists of, you
5 know, take a look at the answer we are going to be giving
6 you and despite my objection I am not withdrawing my
7 objection, say, on relevance or burden but I am going to
8 be trying to produce to you information and let's see if
9 that in fact gets you where you need to go. And often
10 times, you know, information is exchanged, the parties
11 take a look at it and say, well, okay, I see you still
12 have your objection and I don't necessarily agree with
13 your objection but the information that you have provided
14 subject to that objection, you know, is sufficient for my
15 purposes and I am willing to proceed.

16 The mandatory process that has been set up here
17 would not permit that. You basically are saying five
18 days, a mandatory filing of a motion to compel in five
19 days. And, again, as Ms. Paiva has pointed out, you
20 know, that is going to end up being served on the same
21 day that the answers themselves would be due. So there
22 is a disconnect there between the idea of working things
23 out informally and yet having this process that is going
24 to compel all the parties to, you know, file their
25 objections and then rush to you with perhaps motions to

1 compel and perhaps unnecessary motions to compel simply
2 to preserve their rights under this mandatory schedule
3 when I think things -- when you may in fact get the
4 answers and say, no, that answer didn't work it out for
5 me, you know, can you provide something more; no, we
6 can't, we are sticking with our objection; okay, we need
7 to go to the Judge. And that is something given the ten
8 day window here -- for example, for an objection such as
9 burden, you may not in fact figure out until you are
10 trying to pull the answers together at the end of that
11 ten day period that what has been asked of you to provide
12 is simply, you know, unduly burdensome or asking for far
13 more than your resources may permit you to do.

14 MS. PAIVA: Just to add -- this is Ms. Paiva again
15 -- to add to what Mr. Barber has said, Verizon intends to
16 serve some discovery here and I wouldn't want to be
17 forced to file my motion to compel on the day I got the
18 answers from the other parties because I would like to
19 have more time to try to work any objections out.

20 But I don't think there is anything that stops
21 Mr. Cheskis from filing a motion to compel on the day he
22 gets the objection if he wants to. If you don't put any
23 deadlines on that he can still file his motion to compel
24 whenever he wants to. But by making the modifications
25 that OCA suggests you are basically tying the hands of

1 the other parties and preventing us from working things
2 out if we want to and also reviewing the answers and
3 seeing if we are satisfied.

4 MR. BARBER: Right.

5 JUDGE FORDHAM: Mr. Mickens, do you have a response
6 to that?

7 MR. MICKENS: No, I don't, Your Honor, other than
8 the fact that any matter, any concern, if there is a
9 requirement that the parties informally try to resolve
10 the matter first, meaning as soon as any party realizes
11 that there is a problem, if they contact the opposing
12 party and informally attempt to resolve the matter, that
13 would handle any issue that has been raised by either
14 Mr. Barber or Ms. Paiva.

15 MR. BARBER: No, it won't, Your Honor, because if
16 the resolution is I am going to provide you information
17 but you are not going to be getting it for another five
18 days or seven days under this schedule, you know, they
19 are still compelled under this schedule to file their
20 motion to compel to preserve their rights because they
21 are not going to know for another five days, until
22 actually the day they file that motion or the day they
23 would be required to file that motion under this proposed
24 modification, whether they would be satisfied with the
25 answer. They may end up having to --

1 MR. MICKENS: Obviously in that circumstance that
2 would be the resolution. You would then contact the
3 Judge and say the resolution is X and therefore you would
4 not have to file under the requirements because you have
5 informally resolved it, at least for the moment.

6 JUDGE FORDHAM: Let me take a look at some of the
7 other cases. I know that there have been, even in some
8 of the rate cases that I have had, there have been some
9 changes in the discovery regulations but I am not sure of
10 the time periods.

11 I understand the objections from both AT&T and
12 Verizon and what I was thinking about is playing with the
13 time periods a little, not saying that we would not have
14 any time periods at all. But let me take a look at that
15 and we will get back to that. I mean, I won't be able to
16 resolve it before we end today's prehearing conference
17 but that is something we will look into in terms of the
18 dates.

19 MR. BARBER: Thank you, Your Honor.

20 JUDGE FORDHAM: There will be a shortened period of
21 time but I am not sure what the dates will be. So that
22 is B and C that we are dealing with.

23 Now, I believe there were a couple of other things
24 with respect to letter H. I believe by closing the
25 record on 9/3 that we have resolved Ms. Paiva's objection

1 to that.

2 MS. PAIVA: Yes, because the seven days is
3 acceptable.

4 JUDGE FORDHAM: Okay. So we have agreement on A,
5 D, E, F, G and H, is that correct?

6 MS. PAIVA: A, F, G and H.

7 JUDGE FORDHAM: Okay. With respect to my ruling, I
8 guess you wouldn't care about that. So that is E.

9 MS. PAIVA: Right. Right.

10 JUDGE FORDHAM: So D you also have an objection to?

11 MS. PAIVA: Well, I guess if we worked out
12 something acceptable on B and C if you wanted to set a
13 three day rule, that would be fine.

14 JUDGE FORDHAM: Okay. So really we are looking at
15 B and C, then, that are still contested and I will make a
16 ruling on that. And then the others are okay.

17 Now, with respect to Verizon's two -- well, there
18 were three recommendations from Verizon. I don't believe
19 anybody has a problem with number one, which is the
20 interrogatories must be served by e-mail or fax. And
21 that goes to the question that was asked earlier about
22 whether discovery is also e-mailed. And that is e-mailed
23 or faxed with a confirming overnight copy.

24 Then number two, with the service of
25 interrogatories on a Friday or the day before a holiday

1 would be considered service on the next business day,
2 does anyone have any objection to that?

3 MS. JONES: Yes, Your Honor. This is Angela Jones.

4 I recognize that some parties have problems opening
5 documents that I have sent by e-mail in WordPerfect. So
6 I just want to clarify by saying service by e-mail, you
7 want it in Word compatible form?

8 JUDGE FORDHAM: I believe so. I believe everyone
9 that sent me a document yesterday by e-mail sent it in
10 Word and then Ms. Jones, you sent it by fax also and then
11 you told me you could convert it to Word.

12 I did receive a couple of faxes, but I believe that
13 every one is on a Word system. Is that correct?

14 (No audible response.)

15 JUDGE FORDHAM: I didn't hear any objection to
16 that. So we would want it in a Word compatible format.

17 Now, number three is the one that Mr. Cheskis had
18 an objection to because that deals with the best efforts
19 basis and the potential work stoppage. Does anyone else
20 have anything on that recommendation?

21 MS. MISTURAK-GINGRICH: This is Kathleen
22 Misturak-Gingrich for MCI.

23 JUDGE FORDHAM: Could you speak up? We couldn't
24 hear you.

25 MS. MISTURAK-GINGRICH: We would believe that once

1 Verizon has committed to the ten day period that they
2 should be committed to that period and not have a good
3 faith exception to it.

4 JUDGE FORDHAM: Okay. I agree with that. If there
5 is a work stoppage or there are any other problems like
6 that I would like to be informed and then we can deal
7 with that issue on a case-by-case basis.

8 MS. PAIVA: Your Honor, we will make our best
9 efforts to meet the ten days. If something comes up
10 where we can't meet the ten days we will first get back
11 to the party who asked the question. If we can't agree
12 with them, then we will come to you. Would that be
13 acceptable?

14 JUDGE FORDHAM: Yes.

15 MR. MICKENS: I'm sorry, Your Honor.

16 JUDGE FORDHAM: Mr. Mickens?

17 MR. MICKENS: It sounded like with the
18 clarification Verizon has committed itself only to a best
19 effort in ten days when it appeared like you had ordered
20 that it be ten days.

21 JUDGE FORDHAM: Yes. It is ten days and if there
22 is a problem she said she would contact the party and
23 then get to me.

24 MR. MICKENS: Thank you.

25 JUDGE FORDHAM: Do we have any other issues

1 regarding discovery?

2 (No audible response.)

3 JUDGE FORDHAM: Is there any outstanding discovery
4 that is posing a problem at this time?

5 MS. PAIVA: No, Your Honor. I believe we have
6 answered everything that has been asked up to this point.

7 JUDGE FORDHAM: Okay.

8 (Pause.)

9 MS. PAIVA: I am not sure this relates to
10 discovery.

11 JUDGE FORDHAM: Go ahead.

12 MS. PAIVA: Attached to my prehearing memorandum is
13 the standard protective order.

14 JUDGE FORDHAM: Let's get to that later.

15 MS. PAIVA: Okay.

16 JUDGE FORDHAM: Does OCA have something further at
17 this time?

18 MR. CHESKIS: No, we do not, Your Honor.

19 JUDGE FORDHAM: Okay, Ms. Paiva. You can deal with
20 the protective order.

21 MS. PAIVA: Well, we have already produced some
22 proprietary information to the other parties in the
23 discovery that we have answered so far. We produced that
24 under the protective order that was entered in the merger
25 docket. But now that the Commission has rearranged these

1 cases and put it under the new docket number, it just
2 seemed best to enter a new protective order in this case.

3 I attached to my prehearing memo the standard form.
4 This is actually the form that Judge Schnierle entered in
5 the UNE case. I don't know if the parties would like to
6 have some time to look at it first and let you know if
7 they had any problems with it and if not you could enter
8 this.

9 JUDGE FORDHAM: Okay.

10 MS. PAIVA: I know that Mr. Barber, we had an
11 e-mail problem and he didn't get it so he has not had a
12 chance to review it. He might want to have a day or two.

13 MR. BARBER: That would be great, Your Honor. I
14 mean, my expectation is if this is the standard form of
15 protective order we are certainly not going to have any
16 objections to it. I could communicate that by e-mail if
17 you would like.

18 JUDGE FORDHAM: Have the other parties had an
19 opportunity to look at it?

20 What I will do is I will poll the parties and if
21 you want a couple of days let me know. If you have
22 already had an opportunity to look at it and you have no
23 objection let me know that.

24 Mr. Cheskis?

25 MR. CHESKIS: Your Honor, we would appreciate a few

1 days to take a look at this further.

2 JUDGE FORDHAM: Okay.

3 Ms. Jones?

4 MS. JONES: Some additional days for review, Your
5 Honor.

6 JUDGE FORDHAM: Okay.

7 Mr. Mickens?

8 MR. MICKENS: Yes, Your Honor. OTS would like
9 additional time to review it as well.

10 JUDGE FORDHAM: Mr. Povilaitis?

11 MR. POVILAITIS: Yes, that goes for Qwest as well,
12 Your Honor.

13 JUDGE FORDHAM: Since everyone -- there is no need
14 for me to go through the rest since most people want a
15 couple of days to review.

16 Today is Thursday. So by next Tuesday if you have
17 any objections please let me know.

18 MS. MISTURAK-GINGRICH: This is MCI. I just have a
19 question for Ms. Paiva.

20 JUDGE FORDHAM: Yes.

21 MS. MISTURAK-GINGRICH: You said this is the same
22 protective order that was entered in the UNE case? I
23 couldn't hear her. I apologize.

24 MS. PAIVA: Yes. It is the same one that was
25 entered by Judge Schnierle in the UNE case.

1 MS. MISTURAK-GINGRICH: Okay. Thank you.

2 MS. PAIVA: And also it is essentially the same as
3 has been entered in most cases recently.

4 MS. MISTURAK-GINGRICH: Thank you.

5 JUDGE FORDHAM: Now, there were a couple of other
6 items in Verizon's prehearing order that I would like to
7 talk about.

8 One is panel testimony. Does anyone have any
9 objection to panel testimony versus testimony from each
10 witness that would be separated? Does anyone have
11 anything on that issue?

12 MS. MISTURAK-GINGRICH: I guess only on behalf of
13 MCI --

14 JUDGE FORDHAM: Please speak up. Could you come
15 closer?

16 MS. MISTURAK-GINGRICH: -- for purposes of
17 cross-examination who to direct the question to. So if
18 there could be some way for Verizon to maybe designate in
19 advance who on the panel would be best qualified to
20 answer certain of the issues that may arise that could be
21 helpful.

22 JUDGE FORDHAM: Ms. Paiva, did you hear the
23 question?

24 MS. PAIVA: I think she said she wanted us to
25 indicate which witness is responsible for which issue for

1 purposes of cross-examination.

2 JUDGE FORDHAM: Yes.

3 MS. PAIVA: We should be able to do that in the
4 written product so they can tell which witness is
5 responsible for which question.

6 JUDGE FORDHAM: Okay. Because I have had a problem
7 with that before which is why I raised the issue. When
8 we have gotten to the cross-examination it was not clear
9 which witness was responsible for which issue.

10 MS. PAIVA: We will clarify that in the testimony.
11 The only reason we have proposed to do it that way is
12 because it seems to save time, to put them together and
13 have the cross together. That seems to have worked very
14 well in recent cases.

15 JUDGE FORDHAM: Did anyone else other than MCI have
16 a question on that?

17 (No audible response.)

18 JUDGE FORDHAM: The other thing that was mentioned
19 was on-line access to Verizon's cost study. There was
20 something about having a training period. Can you talk
21 about that, Ms. Paiva?

22 MS. PAIVA: Yes. I guess the parties have already
23 had our access cost study and our dialtone line cost
24 study for a while so they know that there is additional
25 information available with on-line access. And in fact,

1 some parties have already requested user IDs and
2 passwords. And now that the case is getting rolling I
3 assume more people are going to now be requesting the
4 passwords.

5 In the context of another case which is before
6 Judge Cocheres, which is UNE loop case, we are going to
7 use the same on-line system and we promised to set up a
8 training session, just basic training on how to do the
9 on-line access, not really the details of the cost study
10 but just the basic training of how to manipulate once you
11 get into it and how to get into the system and things
12 like that.

13 I was thinking that whoever in this case was also
14 interested in training we could just have one training
15 session for everybody and I was going to circulate some
16 dates, hopefully in June so that people could get moving
17 doing it, and probably in Harrisburg because it appears
18 that most of the parties that are interested are from OCA
19 and OTS. But it would be open to AT&T, MCI, anybody who
20 wanted to send somebody for the training, and even Your
21 Honor if you are interested. We did offer it to Judge
22 Cocheres. I don't know if he's going to take us up on
23 it. So I will just circulate by e-mail some potential
24 dates for that and try to set something up.

25 JUDGE FORDHAM: Did anyone have any questions for

1 Ms. Paiva on that?

2 (No audible response.)

3 JUDGE FORDHAM: Now, I note that some of the
4 parties have already listed potential witnesses and we
5 know that they can add to that list. And some did
6 indicate that there were issues and those issues have
7 been delineated in their prehearing memoranda. We know
8 that there are a couple of outstanding discoveries and
9 after that other issues will be delineated and we would
10 also have other witnesses, other potential witnesses.

11 Now, we have set the hearings for three days and I
12 believe we will be able to complete it in that time based
13 on the fact that we do have the prefiled testimony. We
14 might be able to finish it prior to that time.

15 Does any other party have anything before we
16 address some of the issues with the service list?
17 Anything from Ms. Paiva for Verizon?

18 MS. PAIVA: I guess the last thing that is also in
19 our prehearing memo is the potential for the work
20 stoppage to disrupt the hearings if it goes on -- if it
21 happens and if it goes on for too long. The parties have
22 deliberately set up the schedule so that all the
23 testimony will be in before that date. The date is
24 midnight of August 2nd. We are hoping by setting the
25 hearing dates in the end of August we will still be able

1 to go forward with them. But if the work stoppage
2 happens and it's going on for three weeks we may need to
3 come back to Your Honor and even to the Commission and
4 try to adjust the schedule.

5 JUDGE FORDHAM: Okay. That is so noted.

6 Mr. Barber, does AT&T have anything else?

7 MR. BARBER: Nothing further right now, Your Honor.

8 JUDGE FORDHAM: OCA?

9 MR. CHESKIS: We have nothing further, Your Honor.

10 JUDGE FORDHAM: OSBA?

11 MS. JONES: Nothing. Thank you, Your Honor.

12 JUDGE FORDHAM: You're welcome.

13 Mr. Mickens from OTS?

14 MR. MICKENS: Nothing at this time, Your Honor.

15 JUDGE FORDHAM: MCI?

16 MS. MISTURAK-GINGRICH: Just a point of procedure,
17 Your Honor. Ms. Painter has proceeded on motions pro hac
18 vice in several of the related and underlying cases. The
19 question for Your Honor is do you still require a written
20 motion for admission pro hac vice?

21 JUDGE FORDHAM: That would be good.

22 MS. MISTURAK-GINGRICH: Okay. We will file that
23 shortly. Thank you.

24 JUDGE FORDHAM: Qwest?

25 MR. POVILAITIS: Nothing further, Your Honor.

1 JUDGE FORDHAM: Now I will just basically go over
2 the service list that we have.

3 We have Ms. Conover and Ms. Paiva as the
4 representatives from Verizon.

5 For AT&T we have Mr. Barber and then we have
6 Pennsylvania Counsel of Daniel Clearfield and Alan
7 Kohler.

8 MR. BARBER: Just to be clear, Your Honor, I also
9 am a member of the Pennsylvania bar. But, yes,
10 Mr. Clearfield and Mr. Kohler are local Counsel in
11 Harrisburg.

12 JUDGE FORDHAM: And then for the Office of Consumer
13 Advocate we have four. We have Mr. McClelland, Barrett
14 Sheridan, Joel Cheskis and Shaun Sparks.

15 Then for Office of Small Business Advocate,
16 Ms. Jones, we are taking Mr. Gray's name off of the list,
17 is that correct?

18 MS. JONES: That's correct, Your Honor.

19 JUDGE FORDHAM: So Ms. Jones will be the Counsel
20 for the Office of Small Business Advocate and Mr. Gray's
21 name will be removed.

22 Then for Office of Trial Staff we have Mr. Mickens.

23 For MCI we have Michelle Painter and then we have
24 Kathleen Misturak-Gingrich, who is located in Harrisburg.
25 Her name was not previously on our list but it is in

1 MCI's prehearing order which was circulated yesterday.

2 For Qwest we have Mr. Povilaitis.

3 Now, Mr. Povilaitis, we are taking Mr. Snyder's
4 name off and inserting Kristin L. Smith?

5 MR. POVILAITIS: Yes, Your Honor. We will be
6 filing a pro hac vice motion for Ms. Smith. She is
7 replacing Thomas Snyder, although as a courtesy we hope
8 that the parties could carry both names. I understand
9 the Commission's policy is just to use one name and
10 address for official service and that would be myself at
11 our Harrisburg office address.

12 JUDGE FORDHAM: Are Mr. Snyder and Ms. Smith at the
13 same location? I believe it is the same street but they
14 are in different suites.

15 MR. POVILAITIS: Yes, that's correct. We are also
16 going to be filing a withdrawal of appearance by
17 Mr. Snyder and a substitution of appearance for myself.
18 We will provide all parties with Ms. Smith's name and
19 address as well.

20 JUDGE FORDHAM: Thank you.

21 Let me go back to MCI. Ms. Misturak-Gingrich, with
22 respect to Ms. Painter, in addition there was a
23 Carl D. Giesy that was also listed. Is he being taken
24 off?

25 MS. MISTURAK-GINGRICH: I don't believe so, Your

1 Honor. But if that is a burden for anybody I can check
2 with MCI. They are at the same location so with service
3 by e-mail I don't think hard copies need to be separately
4 sent.

5 JUDGE FORDHAM: I don't believe I have his e-mail
6 address. So at this point we will send stuff to
7 Ms. Painter until we get any clarification on that.

8 MS. MISTURAK-GINGRICH: I will take care of that.

9 JUDGE FORDHAM: And then, Ms. Armstrong, we are
10 adding Regina L. Matz also?

11 MS. ARMSTRONG: Thank you, Your Honor.

12 JUDGE FORDHAM: And then, Ms. Benedek, it is just
13 you for Sprint, is that correct?

14 MS. BENEDEK: That's correct, Your Honor.

15 JUDGE FORDHAM: Are there any other corrections
16 that I need to make to the service list?

17 (No audible response.)

18 JUDGE FORDHAM: Hearing none, I would like to thank
19 the parties for their negotiations prior to today's
20 prehearing conference in terms of trying to set up a
21 schedule. It was very helpful for you to have talked
22 about the dates of possible hearings and even some of the
23 discovery matters before we started today's prehearing.
24 So thank you very much for that.

25 I will send out another prehearing order. I will

1 wait until after I've gotten responses about the
2 protective order, so it will probably go out sometime
3 next week.

4 If there are any other issues that you would like
5 to discuss, you have my e-mail address. Please let me
6 know what those issues are and I will try to circulate it
7 to everyone.

8 MS. JONES: Your Honor, this is Angela Jones for
9 OSBA.

10 JUDGE FORDHAM: Yes?

11 MS. JONES: Are you sending out a corrected service
12 list with your order?

13 JUDGE FORDHAM: Yes, I am.

14 MS. JONES: Will you address whether Mr. Blau is
15 still on the service list?

16 JUDGE FORDHAM: Okay. I'm not even sure where his
17 name came from. I forgot. That is another name that I
18 have down here. Does anyone know who he was supposed to
19 be representing?

20 MS. PAIVA: I looked back in the comments and
21 everything to see if I saw his name and I didn't see it
22 anywhere.

23 MR. BARBER: I don't know whether this is a legacy,
24 Your Honor, of the global order or the like but I can't
25 recall him entering a specific appearance either relative

1 to our complaint or, for that matter, in any comments
2 that were filed in response to Verizon's joint proposal.

3 JUDGE FORDHAM: Thank you.

4 Thank you for bringing that up, Ms. Jones. I did
5 have him on the other service. But I have the current
6 service list by party and he didn't fit in with any of
7 the parties so he was not listed there.

8 I will check to see whether he has entered an
9 appearance or filed a comment or anything and if not we
10 will just remove him from the service list. He has not
11 participated in today's hearing. I have not received
12 anything from him. So we will just remove him unless we
13 find out that he is associated with one of the parties.

14 MS. JONES: Thank you, Your Honor.

15 JUDGE FORDHAM: Is there anything further from any
16 of the parties?

17 MR. POVILAITIS: I don't believe so in Harrisburg,
18 Your Honor.

19 JUDGE FORDHAM: Thank you very much.

20 (Whereupon, at 11:00 a.m., the prehearing
21 conference was concluded.)

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